

## **REMARKS**

The present application relates to hybrid maize plant and seed 38T27. Claims 1, 5, 7, and 33 have been amended. Claims 43-58 have been added. No new matter has been added by the present amendment. Applicant respectfully requests consideration of the following remarks.

### **Detailed Action**

#### ***A. Allowable Subject Matter***

Claims 1-7, 20, and 33 were given a Notice of Allowability by the Examiner on May 2, 2003. Applicant is withdrawing from issue the above-identified case in accordance with MPEP §1308 and 37 C.F.R. §1.114 and submitting this preliminary amendment in conjunction with a Request for Continued Examination.

Applicant disagrees with the Examiner's reasons for allowance. Specifically, the Examiner states the prior art also does not teach the inbred parents of 38T27. Rather, such statement should read, the prior art does not teach the combination of the inbred parents to create hybrid 38T27.

#### ***B. Claims and Specification***

Applicant acknowledges the objection to the specification for the presence of a blank line on page 7 as withdrawn.

Applicant acknowledges the objection to claims 6, 12, 16, 25 and 29 as withdrawn. The rejections of claims 1-32 under 35 U.S.C. § 112, second paragraph, is acknowledged as withdrawn in light of the claim amendments. Applicant acknowledges the rejection of claims 1-32 under 35 U.S.C. § 112, first paragraph, requiring a deposit of the maize seed of the invention, as withdrawn in light of the deposit and the deposit statement in the specification and the paper received on November 13, 2002. Finally, Applicant acknowledge the rejections of claims 1-32 under 35 U.S.C. § 102(e)/103(a) as withdrawn.

The foregoing amendments to the claims of this application provide compliance with the requirement of assuring unrestricted public availability of a source of reproductive material of the hybrid maize seed 38T27, deposited under ATCC accession number PTA-4270 and the inbred

parents GE533329 and GE501400, deposited under ATCC accession number(s) PTA-4286 and PTA-1282 of this invention.

Applicant respectfully submits as shown in the amendments to the claims, these corrections are needed for proper disclosure and protection of the invention and require no substantial amount of additional work on the part of the PTO. Applicant respectfully submits there was an inadvertent typographical error whereby the incorrect ATCC Accession No(s). were submitted as PTA-4267 for hybrid maize seen 38T27, PTA-4340 for inbred parent GE533329, and PTA-1715 for GE501400. Applicant herein submits the correct ATCC Accession No(s). are PTA-4270, PTA-4286 and PTA-1282 respectively. Applicant apologizes for this inadvertent typographical error. A copy of the receipt and viability statement for these deposits from the ATCC is attached.

Applicant submits, in order to expedite prosecution, new claims 43-58 list the type of traits that may be conferred. However it should be noted that 38T27 comprising a mutant gene or a transgene, even if it is for a transcription factor, is distinct from another hybrid maize plant comprising that same mutant gene or transgene and still retains the benefit of Applicant's invention.

Applicant has also added claim 58 to further describe the line produced in such a manner by traits that do not vary from the deposited line at a 5% significance level when measured in the same environmental conditions. Phenotypic traits, an identifying characteristic, are utilized by those of ordinary skill in the art to compare two lines, and a phenotypic comparison is the method used by the patent office to evaluate the novelty of the deposited line itself. One of ordinary skill in the art of plant breeding would know how to evaluate the traits of two plant varieties to determine if there is no statistically significant variation when determined, for example, at a 5% significance level and when grown in the same environmental conditions between the traits expressed by those varieties. For the reasons aforementioned, it is respectfully submitted that Applicants' claims are sufficiently described and enabled by the specification.

### **Conclusion**

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested.

If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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